

Online Research @ Cardiff

This is an Open Access document downloaded from ORCA, Cardiff University's institutional repository: <https://orca.cardiff.ac.uk/id/eprint/115792/>

This is the author's version of a work that was submitted to / accepted for publication.

Citation for final published version:

Mugabi, Ivan. K 2018. Models of disability as an analytical tool for representing disability and framing of related obligations in the 1977 state reports to the human rights committee. Journal of Environmental Research And Development 13 (01) , pp. 20-25. file

Publishers page:

Please note:

Changes made as a result of publishing processes such as copy-editing, formatting and page numbers may not be reflected in this version. For the definitive version of this publication, please refer to the published source. You are advised to consult the publisher's version if you wish to cite this paper.

This version is being made available in accordance with publisher policies.

See

<http://orca.cf.ac.uk/policies.html> for usage policies. Copyright and moral rights for publications made available in ORCA are retained by the copyright holders.



MODELS OF DISABILITY AS AN ANALYTICAL TOOL FOR REPRESENTING DISABILITY AND FRAMING OF RELATED OBLIGATIONS IN THE 1977 STATE REPORTS TO THE HUMAN RIGHTS COMMITTEE

Mugabi I.K

School of Law and Politics, Research Cardiff University, Wales (U.K.)

E-mail : mugabiim@cardiff.ac.uk

Received December 29, 2017

Accepted September 09, 2018

ABSTRACT

This paper is designed to use models of disability in examining the manner in which the 1977 State Reports to the Human Rights Committee conceive aspects of disability and the manner in which those conceptions informed the framing of disability related obligations at the time. The paper shall initially justify why models have been perceived as analytical lenses. The medical, social and individual models are the models whose theoretical underpinnings are used to examine the state reports. The paper uses the divergent approaches from models of disability in order to demonstrate how the differences in the presentation of disability as either a consequential attribute of a medical impairment or an outcome of a social construction leads distinctive framing of obligations that States entities expect to be rendered to persons with disabilities. For instance the framing of obligations as mere provision of medical needs rather than accessibility to health rights are a result of the theory underpinning of a model of disability that States are applying or replying upon in reporting about their conceived obligations to persons with disabilities as understood in 1977. The paper is also using State reports of 1977 as a reflection upon historical sources that precede the Convention on Rights of Persons with Disabilities (CRPD) with a view of understanding the evolutionary history of the present trends in disability rights.

Key Words : Models of Disability, 1977 State Reports, Human Rights Committee

INTRODUCTION

In modern disability studies there are different models of disability. For purposes of this paper, I choose to concentrate on the medical and social model that are inward looking and outward looking respectively. Those contrasting approaches of the two models are deployed in this paper to explore how reports that States submitted to the Human Rights Committee in 1977 conceived and represented concepts of disability. The manner in which these State reports conceived and represented disability is important because of its impacts on the ways in which those respective States are understanding the obligations that could arise in relation to issues of disability. Therefore understanding the theory on model of disability and thereafter using its elements to investigate state attitudes and views on disability in that time becomes inevitable.

AIMS AND OBJECTIVES

- This paper is designed to establish the model of disability that selected States used in representing disability and framing their understanding of likely international obligations that might arise in the event of addressing matters of persons with disabilities.
- This paper should also demonstrate model of disability as a learning tool and investigative means through which intentions of actors towards persons with disabilities can be ascertained.
- The paper is set out to present sound results in terms of texts submitted by the
- The paper shall also establish if there is a possibility of using the medical and social models in a complementary manner.
- Through paper the likelihood of divergence in agendas of States parties approaches

contained in their State reports in terms of disability related issues shall be examined.

METHODOLOGY

It should be important to make a strong argument in support of this fairly novel methodological conceptual approach. That is to say, the view that models can even be used as an analytical tool for analysing trends of actors or subjects comprising the body of public international law.

Flower has specifically used Mazzoni's arena models in successfully investigating a policy analysis of the Omnibus Education Reform Act passed by Ohio's General Assembly in the USA.¹ Henstrand's work is relatively similar to that of Flower in terms of using models for designing an operational theoretical and analytical framework. Henstrand does so by relying on several models advanced by different individuals as a theoretical framework for understanding and investigating school culture.² In other words by acting as theoretical frameworks, different disciplines have found numerous models to constitute useful analytical tools for conceptualising and investigating research questions. It is clear apparent that either models have relied on as analytical or conceptual frameworks that are capable of examining research questions. However, there are hardly studies that have actually used models of disability in their approaches as a means of investigating how and when State Reports and regional human rights systems are framing disability related obligations of post-conflict States. Particularly there is neither research nor guidelines from State Reports on the model or approach to disability that post-conflict States should consider in developing *jus post-bellum* duties of protecting of persons with disabilities after situations of armed conflicts.³

Previous studies undertaken by scholars such as Goodley from 2011 to 2016 are limiting their analysis models of disability for purposes of advancing a better post conflict/*jus post-bellum* understanding of disabling environments among protagonists of international disability studies.⁴ Whereas most of Degener's work from 1991-2017 is mostly inclined to viewing and using models/approaches to disability through a Western European and

North American (WENA) centred orientation of disabling characteristics. A disability perspective that seems largely to overlook the impacts and implications armed conflict disabling environments that are peculiar to States of the Global South. Despite the positive contributions from Degener's work, it is fairly to assert that her scholarly perspective might be unknowingly justifying why State Reports should apply models/approach to disability that are more compatible WENA orientated problems of understanding the characteristics of disability and characterisation of disabling environments.⁵ Although some of Degener's work may have similarities with observation of this study. Particularly, in terms of how this paper is investigating the ways in which State Reports are using models of disability. Nonetheless, the originality of this paper partly stems from the difference in its conceptual and objective approach from that of Degener. Bearing in mind it is set out to identify the most suitable model of disability that State Reports must be applying to strengthening the role of disability related obligations in promoting the protection of persons with disabilities through ideas of Third World Approaches to International Law (TWAAIL).⁶ Degener's conceptualisation of disabling environments and consequently the recommend model may be limited relating with armed conflicts and their disabling environments and thus practically inappropriate for addressing salient concerns of persons with disabilities situated in post-conflict States of the Global South.⁷

This work shall also use models of disability approaches to disability by giving special attention to cases where State Reports are applying them for dealing with disability issues arising in their respective contexts. In addition to analysing, that aspect, the observations made from analysing State Reports are vital in establishing how and why selected State are understanding disabling environments in particular ways. Although unlikely to be a universally applied model of disability for approaching the problems of disability of persons with disabilities and obligations related to disability in the different States. Therefore, models and approaches to

disability are considered given their ability to ensure one or more of the following;

- Illustrating if the conceptualisation of disabling aspects presents States as custodians of protective obligations to persons with disabilities.
- Use State reports to understand the applying of a model or approach to disability that would enable international disability law to relate with factors characterising disabling environments in global South States that are supported by scholars of Third World Approaches to International Law (TWAIL).⁸
- Identify model and approach to disability as the best means of rethinking of ways in which State Reports should take into consideration ways of including the varied problems for shaping trends of international obligations.⁹

Maxwell's view who also asserts that the using models for advancing conceptualisations is more difficult than analysing concrete data. Maxwell also propounds that the above demerits of investigating research through theoretical frameworks are far from outweighing the merits of approaching research using this method. Mainly considering its ability in investigating and making sense of how a certain aspect of the World works.¹⁰ It is perhaps less surprising that, *Anfara and Mertz* are also alluding to the merits of using a theoretically designed analysis as a methodological frame work for understanding of the research phenomenon being investigated.

"A useful theory is one that tells an enlightening story about the phenomenon. It is a story that gives you new insights and broadens your understanding of the phenomenon."

In their analysis, *Anfara and Mertz* are discussing Sliver's discussion and definition of theory in a research context.¹² The latter asserted that theory is a unique of perceiving reality, an expression of 'someone's' profound insight into some aspect of nature, representing a fresh or different perception of an aspect of the World.¹³

The above explanation accounts for the significance of this models of disability to the subsequent parts of this paper. Therefore,

depending on the reason for applying a model, it signifies an idea that might be used for illustrative purposes, while in other contexts a model might also be as useful as other ideological and theoretical means used in investigating a hypothetical presumption. At the same time, the theory might elucidate that a concurrent application of these different models of disability might imply importing some inconsistencies in informing the understanding of what leads to disablement and hence a divergence in approaches applied to problems of persons with disabilities in different State Reports. The subsequent sections explain some of the predominantly existing models of disability.

RESULTS AND DISCUSSION

State reports to the HCR/Committee and models of disability

This section is examining the models of disability that are applied in State reports when discussing measures they are undertaking in order to protect persons with disabilities by both pre-conflict and post-conflict States. In this analysis the selecting of States whose reports are considered was based those on the willingness of those States to acknowledge the problems associated with disability in their reports and States that articulated their understanding of disabling environments.

The above shall also demonstrate if the model of disability tends to change in relation to reports from post-conflict States and armed conflicted States. Although in general terms the subsequent section, is broadly interested in how those State reports are perceiving matters of disability and responded to them as evidenced in their respective State reports as submitted to the Committee. States whose reports are considered disability as early as 1977 include; Syrian Arab Republic,¹⁴ Ecuador,¹⁵ Madagascar,¹⁶ Sweden and its report of 7 April 1977,¹⁷ Ukrainian SSR State report of 1978,¹⁸ and the Byelorussian Soviet Socialist Republic Report to Committee.¹⁹

According to a State report of March 1977, the Syrian Arab Republic informed the Committee of some of the measures that it had taken in advancing its protection of persons with disabilities. It included insuring against disability as part of those seemingly risky and

undesirable misfortunes. To this end, Article 46 of the Syrian Arab Republic Constitution cited a duty of ensuring that every citizen and family is insured against accident, sickness, disability, and old age.²⁰

In the above context, the mention of disability seemed to be portrayed as posing an insurable risk. It should be asserted that such a risk of insurance represents being disabled in the context of insuring against the occurrence of a damage, injury, liability, loss, or any other reasonably foreseeable and undesirable coincidence that is caused by extraneous factors. Hence, the effects of the aftermath are alleviated by way of insurance. In the above context, there is some degree of displeasure associated with the identification of disability, to the extent that the disability is perceived as the representation of an insurable risk and thus a preventable rather than protected human identity. The context in which the State is reporting about disability seems to support attitudes of referring to disability as a 'risky' health identity.

The attitude of perceiving disability as an example of an insurable risk appears highly constable although more compatible with peacetimes rather than disablement in post-conflict contexts. Considering that in the context of the later ideas of protecting persons with disabilities based on concepts of insuring are seem to be farfetched and inapplicable in addressing disability related aspects in post-conflict settings, bearing in mind the likely devastation of armed conflict and the need to rebuild such insurance systems. By way of contrast, the 1977 report of the Syrian Arab Republic could raise an interesting question whether such ideas in this report could still have basis looking at current magnitude of cases for war related disabilities that could be identified in the present-day Syria.²¹ It is highly unlikely that persons with disabilities in the present State of Syria could have resources of insuring against disability.²² Although by 1977 when Syria made this report was, it was characterised by ordinary disablements that affects any State in peacetime, where insuring against disability might have sounded logical. Presently it would be unlikely that such insurance policies could

be justified considering the occurrence of disabilities that are the conventional norm of States experience.²³

Additionally according to the State report of Ukrainian SSR in September 1978, evidence of the medical model appears by referring to preventive measures against disabilities.²⁴ That perspective is worth contrasting with the outward-looking approach of the social model that would imply highlighting measures undertaken by the State to enhance integration of persons with disabilities.

The individual and medical models underline ideas of treatment and the state report of Ukraine might have conceptualised as a means of preserving 'normality' through preventing disabilities. According to the state report of Ukraine:

"As stated at the twelfth Congress of Trade Unions of the Ukrainian SSR held. In March 1977 expenditure on State social insurance in the Republic nearly doubled from 1971 to 1975 [...]. The number of passes for accommodation [...] in establishments for the treatment of persons with disabilities doubled. With the assistance of the trade unions, more than 200,000 dwellings are allocated every year."²⁵

It is worth noting that having a disability is perceived as a medical condition addressed through treating them as infirmities that lead to disablement if they are tolerated.

Additionally, attitudes that the state shows towards persons with disabilities are likely to reveal the absence of greater popularity attached to underpinnings of the social model at that point in time. Arguably, the dominance in perspectives of disability based on medical and individual models must have positioned the bodies of persons with disabilities as some problematic medical phenomenon. The approaches of the medical and individual models underpin the conceptualisation of disability and inform what constitutes disabling environments for states experiencing peace.²⁶ However, it is worth noting that Ukraine is reporting about disability based on its characteristics in peaceful times. Hence, there is uncertainty as to the model useful for post-conflict states as majority of state reports concerning the obligations tend to relate to

their peacetimes. It appears that the state of environment peacetime is more conducive for approaching and conceptualising the duties owed to persons with disabilities through the social model's ideas. Those ideas are also more likely to be associable with the characterisation of disablement as construed through peaceful experiences of WENA States.²⁷ However, the aforementioned report is unclear of the contribution made by the individual and medical models in terms of post-conflict rehabilitation that is typical of post-conflict States.²⁸

On 15 June 1978, the Byelorussian Soviet Socialist Republic presents to the Human Rights Committee how it relied on trade unions handle issues of disability.²⁹ Through mandating those trade unions to dispense temporary disability allowances to workers with disabilities. Considering the socialist background of this state, it is unsurprising that as early as 1978 trade unions played a leading role in shaping the socioeconomic life of persons with disabilities, according to state reports from Byelorussian SSR.

In the above regard, the Byelorussian Soviet Socialist Republic informs the Committee of its duty to grant allowances in the event of having short-term disability. Firstly, it is probable that trade unions, given their nature as organisations of workers, are more likely to place emphasis on the inward-looking perspectives of the medical and individual model because of occupation-related disabilities.³⁰

CONCLUSION

It has been noted that model of disability are an effective tool of using the critical aspect from disability examine and expose the intention of actors. For example using the difference in models of disability that State are applying in their State report to expose divergence and contradictions that might be embedded in disability related measures being undertaken by States. Most of the 1977 State reports submitted to the Human Rights Committee depict evidence of State representing disability as a medical condition rather than a social construction. This also implies that in 1977, States predominately relied on an inward-looking rather than the outward looking approach in advancing rights based narratives associated with concepts of disability rights. This is evidenced by the

emphasis on material and welfare needs in terms of social security. Bearing in mind that portraying persons with disabilities individual special needs could overshadow their representation as individuals with special rights. This perspective also appears to inform and impact the manner in which the Human Rights Committee and State Parties to the International Convention on Civil and Political Rights (ICCPR) frames disability related obligation at the time. Another comparative study shall use recent State Reports to the Human Right Committee like those from 2010 to 2018 make a comparative reflection with a view of establishing whether States and Human Rights Committee have learnt any lessons from the models implied under the Convention on the Rights of Persons with Disabilities (CRPD).

REFERENCES

1. Fowler, F.C., Struggling with Theory: A Beginning of the Scholar's Experience with Mazzoni's Arena Models, in *Theoretical Frameworks in Qualitative Research*, V.A. Jr. Anfa and N.T. Mertz, (eds.) (Sage Publishers, 2006). pp. 39-58. See also, F.C. Fowler, 'Education Reform Comes to Ohio: An application of Mazzoni's arena models, Education evaluation and policy analysis, Sage Journals, **16**(3), 335-350, (1994).
2. Henstrand J. L., Seeking an Understanding of School Culture using theory as a framework for observation and analysis, in *Theoretical Frameworks in Qual. Res.*, V.A. Jr. Anfa and N.T. Mertz, (eds.), 1-22, (2006).
3. Traustadottir R., Disability Studies, the Social Model and Legal Developments in The UN Convention on the Rights of Persons with Disabilities European and Scandinavian Perspectives, O. M. Arnadottir and G. Quinn, (eds.) (Martinus Nijhoff Publishers, 10, (2009).
4. Goodley D., Disability Studies: An Interdisciplinary Introduction, London, Sage Publications; See also, Goodley, B. Hughes and L. Davis, 'Introducing Disability and Theory, in *Disability and Social Theory: New Developments and Directions*, D. Goodley, B. Hughes and L. Davis (Eds.), Palgrave Macmillan, 1-21, (2012).
5. Berghs M., Radicalising disability in conflict and post-conflict situations, Disability and

- Society, (2015) 30:5, pp. 743-758. M. Berghs and N. Kabbara, 'Disabled People in Conflicts and Wars, In Disability in the Global South: the Critical Handbook. S. Grech and K. Soldatic, (eds.), London, Springer, 269-285, (2016).
6. Degener T., A New Human Right Model of Disability in the United Nations Convention on the Rights of Persons with Disabilities : A Commentary, V. D. Fina, et al. (Eds.), Springer, 42-57, (2017).
 7. Habasch R., Is the Rights Model of Disability Valid in Post-conflict Lebanon? A Participatory Pilot Survey, *J. Pales. Stud.*, **27**(1), 126-135, (1997).
 8. Fidler D. P., Revolt against or from within the West-TWAIL, the Developing World, and the Future Direction of International Law, *Chin. J. Int. law*, **2**(29), 29-76, (2003).
 9. Businge P., Disability and armed conflict: A quest for Africanising disability in Uganda Disability and the Global South, **3**(1), 816-842, (2016).
 10. Maxwell Joseph A., Qualitative Research Design : An Interactive Approach. Newbury Park CA: Sage, 1-16, (2012).
 11. V.A. Jr. Anfara and N.T. Mertz, Theoretical Frameworks in Qualitative Research, Sage, xvii, (2006).
 12. Sliver F., Education Administration: Theoretical Perspectives and Research, New York, Haper and Row, (1993).
 13. Ibid pg. xiv.
 14. CCPR/C/I/Add. 1 pg. 2.
 15. CCPR/C/I/Add. 8 pg. 18.
 16. CCPR/C/I/Add. 14.
 17. CCPR/C/I/Add. 9 pg. 31.
 18. CCPR/C/I/Add. 14 pg. 25.
 19. CCPR/C/I/Add. 27 pg. 2.
 20. CCPR/C/I/Add. 1 pg. 2.
 21. UN committee on the Rights of Persons with Disabilities, The Forgotten Victims of Syria's Conflict, Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13736&LangID=E> (accessed on 30/December/2017); J. Moussa, 'Elderly, Handicapped under Shelling in Old Aleppo', (Broadcasted on the Al-Aan TV on December 8, 2012). <https://www.youtube.com/watch?v=54ysGTi9Tzo> accessed 7 March 2015.
 22. Droeg, The survey estimated that as many as 22 per cent of Syrian refugees surveyed had an impairment. See also. Help Age International and Handicap International, Hidden victims of the Syrian crisis: Disabled, Injured and older refugees, 6, (2014).
 23. Resolution 2444 (XXIII) of the United Nations General Assembly, Respect for Human Rights in Armed Conflicts, Made at the International Conference of the Red Cross held at Vienna in 1965 and adopted on 12/May/1968 by the International Conference on Human Rights. Available online: <https://www.ihrc.org/> Accessed on 23 February 2017.
 24. CCPR/C/I/Add. 3 pg. 5.
 25. CCPR/C/I/Add. 24, pg. 25.
 26. Nagata K. K., 'Disability and Development: Is the Rights Model of Disability Valid in the Arab Region? An Evidence Based Field Survey in Lebanon and Jordan', Asia Pacific Disability Rehabilitation Journal (2008) 19 (1) pp. 61-78. See also. R. Habasch, 'Is the Rights Model of Disability Valid in Post-conflict Lebanon? A Participatory Pilot Survey', Journal of Palestine Studies, **27**(1), 126-135, (1997).
 27. S. Grech, Disability and Poverty in the Global South: Renegotiating Development in Guatemala, (Palgrave Macmillan, 2015) pg. 20-30. See also. S. Grech, Disability and Development: Critical Connections, Gaps and Contradictions, in Disability in the Global South: the Critical Handbook, S. Grech and K. Soldatic (eds.), Springer, 3-19, (2016).
 28. T.B. Staats, The Rehabilitation of the Amputee in the Developing World: A review of the Literature, Prosthetics and Orthotics International, 20, 45, 50, (1996).
 29. Ivan M., Differences of protective challenges posed by natural and artificially motivated environmental hazards to obligations in article 11 of the convention on the rights of persons with disabilities, *J. Environ. Res. Develop.*, **11**(02), 439-449, (2016).
 30. Alice Uwajambo, Ming Yu and Donath Nsengumuremyi, Climate change, human rights and justice, *J. Environ. Res. Develop.*, **12**(01), 108-116, (2017).

